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J. David Aiken

University of Nebraska-Lincoln

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Cornhusker Economics

Cooperative Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
University of Nebraska – Lincoln

Legality of State Corporate Farming Restrictions

On August 19, 2003 the Eighth Circuit U.S. Court of Appeals ruled that South Dakota's constitutional "Amendment E" restricting corporate farming, violated the interstate commerce clause of the U.S. Constitution. *SD Farm Bureau v Hazeltine*, 340 F3d 583 (8CA 2003). Because much of Amendment E's language is identical with Nebraska's corporate farming constitutional amendment (Initiative 300), the decision implies that I300 could also be unconstitutional.

Adopted in 1998, Amendment E was challenged by South Dakota feedlots who fed livestock owned by out-of-state entities whose livestock ownership would violate Amendment E. These plaintiffs contended that Amendment E violated the interstate commerce clause because it prevented out-of-state entities from owning livestock in South Dakota. In its opinion, the Court of Appeals noted statements by Amendment E supporters that the amendment would prevent Murphy Farms and Tyson Foods, both out-of-state corporations, from operating swine production facilities in South Dakota. The court interpreted these statements as reflecting a discriminatory bias against out-of-state corporations. The court ruled that this discriminatory intent in and of itself violated the interstate commerce clause of the U.S. Constitution, rendering Amendment E unconstitutional.

Surprisingly the Court of Appeals did not analyze the actual language of Amendment E itself. If it had, the court would have realized that Amendment E treated South Dakota non-family farm corporations identically with non-South Dakota non-family farm corporations, and that no economic discrimination existed against out-of-state corporations (the same is

Market Report	Yr Ago	4 Wks Ago	1/16/04
<u>Livestock and Products,</u>			
<u>Average Prices for Week Ending</u>			
Slaughter Steers, Ch. 204, 1100-1300 lb Omaha, cwt	\$79.14	\$ *	\$79.03
Feeder Steers, Med. Frame, 600-650 lb Dodge City, KS, cwt	85.06	102.15	98.72
Feeder Steers, Med. Frame 600-650 lb, Nebraska Auction Wght. Avg	87.71	*	106.54
Carcass Price, Ch. 1-3, 550-700 lb Cent. US, Equiv. Index Value, cwt	122.17	*	126.77
Hogs, US 1-2, 220-230 lb Sioux Falls, SD, cwt	35.00	*	40.00
Feeder Pigs, US 1-2, 40-45 lb Sioux Falls, SD, hd	*	*	*
Vacuum Packed Pork Loins, Wholesale, 13-19 lb, 1/4" Trim, Cent. US, cwt	92.36	*	110.35
Slaughter Lambs, Ch. & Pr., 115-125 lb Sioux Falls, SD, cwt	*	*	*
Carcass Lambs, Ch. & Pr., 1-4, 55-65 lb FOB Midwest, cwt	164.72	*	181.44
<u>Crops,</u>			
<u>Cash Truck Prices for Date Shown</u>			
Wheat, No. 1, H.W. Omaha, bu	3.68	*	3.96
Corn, No. 2, Yellow Omaha, bu	2.24	*	2.55
Soybeans, No. 1, Yellow Omaha, bu	5.46	*	8.18
Grain Sorghum, No. 2, Yellow Kansas City, cwt	4.46	*	4.78
Oats, No. 2, Heavy Minneapolis, MN, bu	2.33	*	1.79
<u>Hay,</u>			
<u>First Day of Week Pile Prices</u>			
Alfalfa, Sm. Square, RFV 150 or better Platte Valley, ton	150.00	*	130.00
Alfalfa, Lg. Round, Good Northeast Nebraska, ton	80.00	*	55.00
Prairie, Sm. Square, Good Northeast Nebraska, ton	115.00	*	*
* No market.			



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true for I300). The court, on October 31, 2003 declined to rehear the case, meaning that *Hazeltine* will stand unless it is reversed on appeal by the U.S. Supreme Court.

The fundamental issue is whether South Dakota (or any state) can regulate non-family farm entities in favor of family-farm entities. This issue was not addressed in *Hazeltine*. Interestingly, one of the three *Hazeltine* judges was a member of the Eighth Circuit Judicial Panel that ruled in 1991 that I300 was constitutional. *MSM Farms v Spire*, 927 F2d 330 (8CA 1991). In *Spire*, interstate commerce was not at issue and was not addressed by the court. The *Spire* court did conclude, however, that having different legal rules for family-farm entities and non-family farm entities did not violate either the due process clause or the equal protection clause of the U.S. Constitution. The *Hazeltine* court acknowledged that promoting family farms was a legitimate state interest (340 F3d at 598), but concluded that this could not overcome Amendment E's discriminatory intent against out-of-state entities. However, the *Hazeltine* court was incorrect in concluding that Amendment E discriminated against out-of-state entities.

If *Hazeltine* is not overruled, I300 will be vulnerable to legal challenge. Out-of-state entities (such as out-of-state meat packers) could argue that I300 discriminates against them by not allowing them to own livestock and have it custom-fed in Nebraska, the same allegation successfully used in *Hazeltine*. This would give the Eighth Circuit an opportunity to correct its *Hazeltine* mistake – out-of-state packers are subject to the same livestock ownership restrictions as in-state packers, so there is no discrimination. If I300 were legally challenged and the Eighth Circuit adhered to *Hazeltine*, I300 might still avoid being declared unconstitutional. In the 1981 debate over I300, the Murphy Farms and Tyson Foods of the world had not yet risen to national prominence as livestock producers, and were not “targets” of I300 supporters. While there was some interstate dimension to the I300 debate (much was made of the Wall Street promotion and funding of center-pivot limited partnerships in the Nebraska Sandhills) the main issue was the role of absentee owners (wherever located), and not specifically whether *out-of-state* interests threatened Nebraska family farmers. In any event, the outcome of a *Hazeltine* challenge to I300 is uncertain.

Hazeltine is one factor in a legislative proposal to

study the effects of I300 on Nebraska. LB1086 would establish a Nebraska Agricultural Opportunities Task Force to consider whether I300 should be modified in response to changes occurring in the Nebraska agricultural economy over the past two decades. The task force would examine the effect of I300 on: (1) inter-generational transfers between unrelated farmers, (2) producer networking (e.g. farrowing cooperatives) and value-added entities, (3) attracting investment in using ag products for pharmaceutical and industrial purposes, and (4) using new legal entities (such as limited liability companies) in agriculture. The task force would also consider the impact of *Hazeltine* on I300 and state corporate farming policy in general.

This I300 reconsideration is appropriate. While there may be legal work-arounds, I300 does limit ag producer options. A good example is farrowing cooperatives. Before I300, grain farmers often created farrowing cooperatives to supply feeder pigs to co-op members. When the baby pigs were fed and marketed, co-op members added significant value to their grain. A legal entity approximating the traditional farrowing co-op can be developed within I300 constraints, but the “co-op” members would have less control over the farrowing operation, would have more risk, and would face more paperwork. Loosening some I300 restrictions would give producers more options and greater flexibility with which to face an increasingly uncertain economic future.

LB1086 will be heard by the Agriculture Committee on February 17, 2004 at 1:30 p.m. in Room 1054, State Capitol.

J. David Aiken, Professor, (402) 472-1848
Water & Agricultural Law Specialist
daiken@unl.edu